IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

Sensa Verogna, Plaintiff,)
v.) Case #: **1:20-cv-00536-SM**
Twitter Inc., Defendant.)

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S OBJECTION TO DEFENDANT'S MOTION TO DISMISS COMPLAINT OR, ALTERNATIVELY, TRANSFER

A. CLAIM I

1. Plaintiff has alleged in the Complaint a claim under 42 U.S.C. § 1981 that he is white and of a protected class, Compl. ¶ 16. And that; the defendant Twitter intentionally discriminated against him because he was white, while simultaneously, similarly situated non-whites were treated differently even though they have committed similar or worse acts, which gives the appearance of racial disparity in the issuing of discipline for virtually the same or less infraction and invokes the notion of treating two persons differently on the basis of a certain characteristic that only one possesses. Compl. at ¶ 1179; And as a result, Plaintiff suffered equitable losses, Compl. ¶ 1232; compensatory damages, Compl. ¶ 1233; suffered damages, and continues to suffer, including, but not limited to, insult, pain, embarrassment, humiliation, emotional distress, mental suffering, and injury to his personal and professional reputations, including general or special damages, costs, and other out of-pocket expenses. Compl. ¶ 1237;

2. 42 U.S.C. § 1981 guarantees to "all persons" the same general rights of contract and equal protection as "white citizens."' 42 U.S.C. § 1981 guarantees to "all citizens" the same property rights as "white citizens."' The Supreme Court of the United States has held that 42 U.S.C. § 1981 also protects white persons who have suffered discrimination because of their race. See McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273 (1976).

3. 42 U.S.C. § 1981 prohibits race discrimination in the making and enforcing of contracts. It prohibits racial discrimination against whites as well as nonwhites. See McDonald v. Santa Fe Trail Transp. Co., 427 U.S. 273, 295 (1976) (Section 1981 was intended to "proscribe discrimination in the making or enforcement of contracts against, or in favor of, any race"). In Runyon v. McCrary, 427 U.S. 160 (1976), the Supreme Court held that Section 1981 regulated private conduct as well as governmental action. See McGovern v. City of Philadelphia, 554 F.3d 114, 122 (3d Cir. 2009).

4. Specifically, the Court ruled that "a [Section]1981 plaintiff bears the burden of showing that the plaintiff's race was a 'but-for cause' of its injury, and that burden remains constant over the life of the lawsuit," including during the initial pleading stage. The "but for" cause and the motivation for the above-described conduct by defendant Twitter' CEO, officers, directors, managers, employee's or other contractors or actors, was because Plaintiff is white and a member of the white race. Compl. ¶ 1246.

5. § 1981, originally § 1 of the Civil Rights Act of 1866, 14 Stat. 27, has a specific function: It protects the equal right of "[a]ll persons within the jurisdiction of the United States" to "make and enforce contracts" without respect to race. 42 U.S.C. § 1981(a). The statute currently defines "make and enforce contracts" to "includ[e] the making, performance, modification, and *termination* of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship." § 1981(b). See Domino's Pizza, Inc. v. McDonald, 546 U.S. 470, 126 S.Ct. 1246, 163 L.Ed.2d 1069 (2006).

6. It is now well established that § 1 of the Civil Rights Act of 1866, 14 Stat. 27, 42 U.S. C. § 1981, prohibits racial discrimination in the making and *enforcement of private contracts.* See Johnson v. Railway Express *169 Agency, 421 U.S. 454, 459-460; Tillman v. Wheaton-Haven

Recreation Assn., 410 U.S. 431, 439-440. Cf. Jones v. Alfred H. Mayer Co., 392 U.S. 409, 441-443, n. 78.

7. "Twitter, purposely and discriminately locked and then banned Plaintiff's contract and services, Twitter impaired the 'contractual relationship' under which Plaintiff had rights." Twitter denied Plaintiff the right to these services, the right to make and expand the contract to include these and other services and to the benefits or privileges of their contractual relationship. And while Twitter purposely deprived Plaintiff of services, similarly, situated users outside Plaintiff's protected class, who had signed identical contracts similar to Plaintiff, and were not denied the same services. Twitter allowed non-Whites to speak their minds and behave as non-whites, while denying whites like the Plaintiff this advantage and that he has alleged that his suspension was the result of discriminatory animus." Compl. ¶ 1184-1191; "banned his account and contract because he was white and/or behaving white", Compl. ¶ 1194; and "Additionally, Twitters' CEO, officers, directors and/or managers knowingly participated in and condoned the discriminatory conduct as they maliciously used their new Health Policy initiative as a pretext to discriminately remove or ban for life, actual white persons from its public facilities", Compl. ¶ 1279.

8. Twitter, as a contractee, owed a duty not to discriminate against the Plaintiff while enforcing their contract. The "but for" cause and the motivation for the above-described conduct by defendant Twitter' CEO, officers, directors, managers, employee's or other contractors or actors, was because Plaintiff is white and a member of the white race. See Compl. ¶ 16 and ¶ 32.

9. For the reasons stated in Plaintiff's Complaint and herein, Plaintiff has alleged in Claim I, a proper action for violations of his rights under 42 U.S.C. § 1981.

B. CLAIM II

10. Plaintiff's Complaint states; "NH Rev Stat § 155:39-a, such as those described and display throughout Exhibit Q ; IT SHOULD READ "Exhibit P". Compl. ¶ 914.

11. Plaintiff has alleged in the Complaint a claim under 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17 that he is white and of a protected class: and that; Twitter is a place of public accommodation; that he attempted to exercise his right to full benefits and enjoyment of a place of public accommodation; but was denied those benefits and enjoyment because of his race; and was treated less favorably than similarly situated persons who are not members of the protected class; and was required to behave like a non-white person as a condition for admission; and that Twitter owed a duty and breached that duty not to discriminate against the Plaintiff in a place of accommodation as described within 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17.

12. Plaintiff has alleged in the Complaint that Twitter is a place of public accommodation within the meaning of 42 U.S.C. §2000a(b) and (c), (2), (3) and (4) and NH Rev Stat § 155:39-a, as its operation of cafeteria's, lunchrooms, lunch counters, soda fountains, motion picture houses, theaters, concert halls or other places of exhibition or entertainment within its many facilities or establishments affect commerce as a substantial portion of the food which it serves or other products which it sells, has moved in commerce within the meaning of 42 U.S.C. § 2000a(b) 2 and (c)2 and NH Rev Stat § 155:39-a, II. Additionally, Twitter customarily presents performances, exhibitions or other sources of entertainment which move in commerce through its live feed of events inside it's many facilities throughout the US within the meaning of 42 U.S.C. § 2000a(b)(3), (c)(3) and NH Rev Stat § 155:39-a III and additionally under 42 U.S.C. § 2000a(b) 4 and (c)(4), as any establishment that contains a covered establishment, and which holds itself out as serving patrons of that covered establishment. See @Bonnepetweet, a private bakery and

sandwich shop (Compl. ¶ 63, 899, 900-911, 913, 1259, 1264, and Compl. ¶ Exhibit C- Bon Appetite Business Registration and Exhibits P-5 and P-6. And Exhibits P-1 through P-33) (*Mis-stated in Compl. ¶ 914 as Exhibit Q). (See also Plaintiff's Motion to Declare Twitter a Public Accommodation Under Law and Brief and Memorandum in Support, filed with the Court on May 29, 2020).

13. NH Rev Stat § 354-A:17 which creates plaintiffs private right of action and NH Rev Stat § 354-A and NH Rev Stat § 354-A:21 stipulate no prerequisites of first bringing any claim before an administrative agency and simply states "Any person claiming to be aggrieved by an unlawful discriminatory practice may make, sign and file with the commission a verified complaint". As such, Plaintiff need not hurdle and exhaust himself first through any State administrative prerequisites to bring a claim under New Hampshire's anti-discrimination in public accommodation law, NH Rev Stat § 354-A:17 or penalties described in NH Rev Stat § 354-B:3 (2016). (Compl. ¶ 76, 938, 1250, 1264 and 1412).

14. If the New Hampshire legislature intended to make the administrative procedures in N H NH Rev Stat § 354-A:21 exclusive having a preemptory effect, it would have included an express preemption clause. NH Rev Stat § 354-A:25 does state that "[i]f such individual institutes any action based on such grievance without resorting to the procedure provided in this chapter, such person may not subsequently resort to the procedure in this chapter ..." It does not say, however, that if a person first resorts to the procedures in this chapter, that person may not later institute a civil action setting forth state common-law claims. See Douglas v. Coca-Cola Bottling Co. of N. New England, Inc., 855 F. Supp. 518, 522 (D.N.H. 1994); In re Perkins, 147 N.H. 652 (2002). Additionally, Munroe v. Compaq Computer Corp., 229 F. Supp. 2d 52, 67 (D.N.H. 2002) is irrelevant to the circumstances in this case.

15. The only prerequisite to bring a 42 U.S.C. § 2000a claim is 42 U.S. Code § 2000a–3(c.) which claimants must hurdle to obtain any injunctive relief under the statute. Plaintiff has provided written notice to the appropriate State Authority by registered mail, has waited the duration of the 30 days prescribed, and is entitled to remedies available in 42 U.S. Code § 2000a–3, such as injunctive relief. See Exhibit C- Notice to Attorney General and Receipt.

16. Twitter purposely and discriminately locked and then *banned* Plaintiff's contract and services, Twitter impaired the 'contractual relationship' under which Plaintiff had rights." Twitter denied Plaintiff the right to these services, the right to make and expand the contract to include these and other services and to the benefits or privileges of their contractual relationship. And while Twitter purposely deprived Plaintiff of services, similarly, situated users outside Plaintiff's protected class, who had signed identical contracts similar to Plaintiff, were not denied the same services. Twitter allowed non-Whites to speak their minds and behave as non-whites, while denying whites like Plaintiff this advantage and has alleged that his suspension was the result of discriminatory animus, Compl. ¶ 1184-1191; "banned his account and contract because he was white and/or behaving white", Compl. ¶ 1194; and "Additionally, Twitters' CEO, officers, directors and/or managers knowingly participated in and condoned the discriminatory conduct as they maliciously used their new Health Policy initiative as a pretext to discriminately remove or ban for life, actual white persons from its public facilities", Compl. ¶ 1279.

17. Plaintiff's complaint does not opine that Twitter's online forum is a "place of public accommodation", but that Twitter's computer network is a public forum and a service Twitter offers to the public. Compl. ¶ 953, ¶ 963, ¶ 970 and ¶ 1481.

18. At minimum, the stubborn fact that the Twitter facility in San Francisco contains

and houses a covered establishment within its facility, Bon Appetit Management Co., which holds itself out as serving the public and patrons of that covered establishment would, in fact, bring it within the reach and definition of 42 U.S.C. § 2000a(b) 4 and (c)(4).

19. For the reasons stated in Plaintiff's Complaint, herein and in Plaintiff's Motion to Declare Twitter a Public Accommodation under Law, this Court should declare that Twitter, Inc. is a Public Accommodation effecting commerce under both Federal and New Hampshire laws, OR minimally, that it was, within the time frame of Plaintiff's Complaint, and that Plaintiff has alleged in Claim II, a proper action under 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17.

C. CLAIM III

(1). Claims

20. Defendant supposes that Plaintiff's allegations with respect to race are conclusory. That could only be true should one surmise *without* looking any further to any foundation, underlying logic, or reasoning included throughout the *entire* Complaint.

21. Twitter banned Plaintiff from using many of the services offered at Twitter.com . . . due to his race." Taken alone this may be taken as conclusory, but the Plaintiff's Complaint also states that a lot more that bald assertions. Compl. ¶ 140.

22. Defendant's Workforce was non-white or anti-white Compl. ¶ 855 biased and was probably about 90% anti-Trump, maybe 99% anti-Trump as stated by a Twitter employee. Compl. ¶ 492, and created an algorithmic solution to white supremacy, which would also catch Republican politicians." Compl. ¶ 801; and that that race made a difference in Twitters decisions and raises an inference that Twitters legitimate reasons such as "Health" were not it's true reasons for banning tweets and the contracts of a white Sensa and other white users, but were a pretext for mass discrimination as a result of racial animus held by Twitters Workforce. Compl. ¶ 1350.

23. Defendants' CEO, officers, directors and/or managers knowingly: and maliciously devised, participated in and condoned the discriminatory conduct as they used their new Health Policy initiative as a pretext to discriminately remove or ban for life the contracts, of perceived or actual white owned accounts like Plaintiff's. Compl. ¶ 116; knowingly participated in and condoned the discriminatory conduct as they maliciously used their new Health Policy initiative as a pretext to discriminately remove or ban for life, actual white persons from its public facilities. Compl. ¶ 1280, that allows non-white users and Blue Check'ers to post racist and anti-white propaganda because they [Twitter] themselves are anti-white and hate white people, Compl. ¶ 405, Compl. Exhibits ¶ L, ¶ M and ¶ N; and maliciously participated in and condoned the discriminatory conduct as they used their new "Health" initiative as a pretext to discriminately remove tweets or replies based on Twitters viewpoint or ban for life the contracts, of perceived or actual white owned accounts like Plaintiff's. Compl. ¶ 1360. "Health Policies which have shown to have a strong bias against and have displayed a racially discriminatory animus toward Republicans or Conservatives, who are, like Plaintiff, generally white." Compl. ¶257, Compl. Exhibits ¶ J and ¶ K. Health policies created, in part, because white nationalists groups were surging throughout 2019 Compl. ¶ 763, Congress was holding hearings concerning the impact of white nationalist groups Compl. ¶ 787, 832, 836; inquiring as to what social media companies can do to stem white nationalist propaganda and hate speech online and what the public forums are doing to police their public forums, Compl. ¶ 790; and that because of public pressure Compl. ¶ 846, and pressure from Congress, shareholders, and its own anti-white Workforce Compl. ¶ 856,

24. Defendants wrote and trained its algorithms, set its agenda's, formulated and implemented policies to track, police and regulate on the basis of going after and removing white supremacists, white separatists and white nationalists knowing that it would effect or regulate

white Republicans, Conservatives and whites voices and white political views which, in fact, was demonstrated when Defendant regulated and shadow banned a majority of 600,000 Republicans and Conservatives who are mostly white, by Defendants' Workforce, who are, upon information and belief, mostly non-white or anti-white", therefore causing harm to the Plaintiff. Compl. ¶ 848.

25. Which resulted in Trump supporters who according to a Pew Research Center Study to be overwhelmingly white. Compl. ¶ 236, and various other "white" users had their accounts banned by Defendant's also, by a "Health Policy" was built to find whites and not non-whites and was not designed to target non-whites" Compl. ¶ 403, Exhibits. ¶ K through ¶ O.

26. Plaintiff's claims in Claim III allege that the Defendant should not be granted or be able to claim unconditional §230 immunity as they were out of their limits, overbroad in their role of "good Samaritan" and in "bad faith", used vague singular or plural forms of content-based or behavior-based speech suppression through its Health Policy, or tools thereof, in targeting and deleting Plaintiff's tweet and thereby controlling a white colored Plaintiff's third-party political speech on its website. Compl. ¶ 1063. And that even if political speech isn't covered under any Constitutional claims, Defendant deleted Plaintiff's free speech on a discriminatory content-based or subject matter viewpoint basis when it removed his tweet and banned his account in a public forum and not within the parameters of Section §230. Compl. ¶ 1074. And that Defendant also acted Twitter also acted under the color of State and acting as State Actor and operating a public forum and fulfilling functions ordinarily reserved to the State in a public forum, violated Plaintiff's free speech rights protected by Article 22 of the New Hampshire Constitution and the U.S. Constitution Article [I] Due Process and Equal Protections clauses within Articles [IV] and [XIV] when it regulated, imposed a viewpoint or behavior based restriction to delete his tweet Compl. ¶ 1328, and then violated Plaintiff's freedom to assemble protected by the U.S. Constitution Article

[I] and Article 32 of the New Hampshire Constitution and the Due Process and Equal Protections clauses within Articles [IV] and [XIV] when it banned Plaintiff, from entering its public forum, Compl. ¶ 1333, or that at a minimum, it violated his Constitutional rights for banning Plaintiff to any DSF's within its public forum. Compl. ¶ 1336.

27. For the reasons stated in Plaintiff's Complaint and herein Plaintiff has alleged in Claim III, a proper action for violations of his US and New Hampshire Constitutional rights.

(2). Anonymous

28. Simply because the Plaintiff's account operated pseudonymously does not automatically equate that Defendant had no other way of determining Plaintiff's race. A Twitter account includes so much more information than "by mail, by e-mail, or over the telephone." Plaintiff's Twitter account displayed a picture of a white man, Compl. ¶ Exhibit E, Sensa tweeted, posted, communicated, acted, represented, displayed, behaved and portrayed himself to be a white person and a member of the white race who followed, replied and conversed directly, relaying his many political views to many politicians, members of Congress, newspapers, other MAGA followers, including the @realDonaldTrump and other DPF's on Twitters public forum, Twitter.com. Compl. ¶ 1254, ¶ 1148.

29. On September 5. 2018, Jack Dorsey, testified verbally to the United States House Committee on Energy and Commerce, and stated, in part;

1788 Mr. McNerney: "So when targeting ads, are advertisers able to exclude certain categories of users on Twitter, which would be discriminatory?

1791 Mr. Dorsey. I am sorry. Can you -- can you -- for political ads or issues ads?

1793 Mr. McNerney. No, for non-political ads. Are advertisers able to exclude groups or categories of users?

1795 Mr. Dorsey. Advertisers are able to build criteria that include and exclude folks.

1797 Mr. McNerney. So that could be -- end up being discriminatory?
1799 Mr. Dorsey. Perhaps, yes.
See Compl. Exhibit ¶ Q-2.

30. To say the Defendant's knew nothing of the Plaintiff's particular race is absurd as they have the very equipment, resources, algorithms, machinery, artificial intelligence or other devices to come to a well-informed determination regarding a user's race. Providing resources to its advertisers which would enable them to build a discriminatory criterion suggests they have the ability to determine race. Additionally, Defendant's use algorithms or artificial intelligence which can narrow down a user's race by focusing on words used or behaviors of a particular race. Compl. ¶ 452; Compl. ¶ 800-827; Compl. ¶ 1012.

(3). State Actor

31. The Plaintiff has alleged that; Congress is "essentially relegating it's duties to protect, police and regulate free speech" to private companies. Compl. ¶ 1012; Congress is "the boss and Twitter the Executive with policing powers.", Compl. ¶ 1025; that Twitter "does "police" it's public forum at the direction of the Federal Government and Congress which enables it to take enforcement actions against those that Congress believes to be law breakers of obscenity, disturbing the peace, fighting words, or in Twitters case in which it "police(s)" "behaviors"", Compl. ¶ 1034; that "Twitter is a state actor who, for its own economic benefit of legal protection, acted on behalf of Congress and through §230.", Compl. ¶ 1055; that "Congress, unlawfully, unreasonably and contrary to law, exceeded its constitutional bounds granted by Articles [I] or [XIV] of the Constitution, Part I, Article 22 of the New Hampshire Constitution and lacks authority under Article I, Section 8 of the Constitution, specifically under the Commerce Clause, to regulate and/or police and Americans speech specifically through §230 as it is not a valid exercise of Congress' commerce powers as public speech or the criminal nature of speech are entirely

noneconomic.", Compl. ¶ 1078; that "Twitters' boardroom is led by executives who seek guidance and directives from Congress", Compl. ¶ 1381; that "Twitters Workforce was in fact working under the direction of Congress to aid in the policing and enforcement of §230", Compl. ¶ 1389;

32. The Plaintiff also states in his Brief in Support of Plaintiffs Motion to Declare Twitter a State Actor under Law that; "In this case, Congress would be specifically responsible for the particular activity of which Plaintiff complains because they subbed Executive Authority to Twitter, and Twitter would be held responsible for its own misuse of that authority. Docket 6. ¶ 301; "Congress clearly indicated in the relevant regulation of §230 through its strong preference for punishing, and its desire to share the fruits of such intrusions in the interests of a booming internet; Docket 6. ¶ 352; this encouragement, endorsement and participation in the private activity created state action." Docket 6. ¶ 354; that "where the state has exercised coercive power or has provided such significant encouragement, either overt or covert that the action of the private party must in law be deemed to be that of the state." Docket 6. ¶ 259; Congress has expressed its "coercive power in threatening publicly to abolish or threating Anti-Trust Regulations or by providing encouragement, either publicly or through Oversight Hearings or enforcement meetings", and that "the choice must in law be deemed to be that of the Congress." Docket 6. ¶ 356; "Twitters use of §230 suggests coercive power." Docket 6. ¶ 439; (See attached Exhibit A, EXECUTIVE ORDER PREVENTING ONLINE CENSORSHIP signed by President Trump on May 28, 2020, Brief in Support of Plaintiff's Motion to Declare Twitter a State Actor under Law, "Executive exercise of coercive power."

33. Twitter, willfully participating and acting in accordance with their authority through §230, deprived Plaintiff of his Constitutional rights. Twitter, entwined with governmental policies, members of Congress and the President has become so impregnated with government

character and therefore should be subject to constitutional limitations placed upon state action. It can also be fairly stated that Twitter, having to answer to Congress, the United States Attorney General, honorable, William Barr and the President of the United States regarding Twitters use of §230 suggests coercive power. Docket 6. ¶ 431. See Affidavit, Exhibit A, in support.

34. It is because Congress delegated to Twitter Executive policing powers through 230 by which Plaintiff was injured. Twitter, endowed by §230 acted as an instrument of Congress. Twitter also has a symbiotic relationship with Congress through §230 to which it assumed the traditional Constitutional and Executive duties of policing speech and other criminal acts which are enforced by State and Local Law Enforcement Agencies, and was in fact acting for Congress and relied on governmental assistance to police its public forum and received many benefits for its work. Docket 6. ¶ 441.

35. For the reasons stated in the complaint, herein, and in the supporting brief and memorandum of law, and all that is attached, this Court should declare that Twitter, Inc., a "State Actor" under the law, OR minimally, that it was, within the time frame of Plaintiff's Complaint.

(4). Public Forum

36. Twitter's computer network is a public forum open to the public for the purpose of speaking in public and for the purpose of encouraging the patronizing of its advertisers. Although Twitter is privately organized, its computer network exhibits all the features of a public forum conducive to the public communication of views on issues of political and social significance and indeed has assumed law enforcement responsibilities normally reserved for State Actors through §230. By exercising public functions, this nominally private entity assumed the constitutional obligations of local government, specifically including the duty to permit exercise of expressive rights within the boundaries of its forum which serves as the functional equivalent of a business

block open to the general public and does not violate Twitter's property rights under the Fifth and Fourteenth Amendments. Compl. ¶ 953-962.

37. Twitter has intentionally transformed its computer network into a public forum, square or market, a public gathering place, a downtown business district or community. They cannot now deny their own implied invitation to use the space as it was clearly intended, a public forum for public speech, whose nature, purpose and primary use is public and not private speech, which is open to the public. Compl. ¶ 963-967.

38. Defendant's First Amendment rights do not bar Plaintiffs claim III if Twitter is declared a public forum as alleged: Twitter has intentionally transformed its computer network into a public forum, square or market, a public gathering place. Compl. ¶ 963; Twitter has become a critical public forum for the expression of protected speech and the federal courts of appeals has held that the government can create public forums within Twitter's public forum computer network. Compl. ¶ 968; That Twitter does "police" it's public forum at the direction of the Federal Government and Congress. Compl. ¶ 1035; Executive status in the form of legal immunity and in the savings of legal fees in return for policing it's designated public forum under the government created §230. Compl. ¶ 1041.

39. For the reasons stated in the Complaint, herein, and in Plaintiff's Motion to Declare Twitter's Computer Network a Public Forum under Law and Brief and Memorandum in Support, this Court should declare that Twitter's computer network is a Public Forum under the law, OR minimally, that it was, within the time frame of Plaintiff's Complaint.

(5). Section §230

40. Under the CDA or Section §230, Plaintiff alleges that: §230 is unconstitutionally vague, overbroad and viewpoint discriminatory, Compl. ¶ 1118; §230 is also facially overbroad

because a substantial number of its applications such as removing speech "taken in good faith" and speech "otherwise objectionable" are unconstitutional and viewpoint discriminatory on their face because it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits and it authorizes or even encourages arbitrary and discriminatory enforcement." Compl. ¶ 1126, and that; Congress, unlawfully, unreasonably and contrary to law, exceeded its constitutional bounds granted by Articles [I] or [XIV] of the Constitution, Part I, Article 22 of the New Hampshire Constitution and lacks authority under Article I, Section 8 of the Constitution, specifically under the Commerce Clause, to regulate and/or police and Americans speech specifically through §230 as it is not a valid exercise of Congress' commerce powers as public speech or the criminal nature of speech are entirely noneconomic. Compl. ¶ 1178; Congress has exceeded its constitutional bounds in passing §230 as in our federal system, the National Government possesses only limited powers where the States and the people retain the remainder. Police power, such as punishing street crime, regulating speech or behavior is possessed by the States and not by the Federal Government. Compl. ¶ 1093; Additionally, Plaintiff would argue that §230 regulates people's speech and not commercial entities, and is therefore unconstitutional and that if this Court were to decide that §230 bars these type Claims, it would effectively abolish laws like 42 U.S.C. § 1981, 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17 and other Constitutional claims in the modern world of speech and rights to assemble and that the "Safe Harbors" provided in §230, ought not to be used to evade public policies laws.

41. Without these arguments being fully briefed, Plaintiff's claims that §230 is unconstitutional, with the reasons set forth in the Complaint, should be sufficient to state a cause of action at this stage of the proceedings that, Defendant's could be liable for any of claims should §230 be ruled unconstitutional for any of the reasons stated in the Complaint.

D. MOTION UNDER 28 U.S.C. § 1404(a)

(1). Venue Forum Clause or UA

42. Whether applying Compl., Ex. D-1, at § 6 General or Defendant's Attached Contract at Docket. ¶ 3, Twitter's Contract Venue Forum Clause, "UA" provides that:

> **The laws of the State of California, excluding its choice of law provisions, will govern these Terms and any dispute that arises between you and Twitter. <u>All disputes</u> related to these Terms or the Services will be brought solely in the federal or state courts located in San Francisco County, California, United States, and you consent to personal jurisdiction and waive any objection as to inconvenient forum."**

43. Additionally, the UA provides that:

> **"THE LIMITATIONS OF THIS SUBSECTION SHALL APPLY TO ANY THEORY OF LIABILITY, WHETHER BASED ON WARRANTY, CONTRACT, STATUTE, TORT (INCLUDING NEGLIGENCE)"**

44. These clauses are ambiguous and do not include Negligence Per Se causes of action and if these clause(s) do in fact cover Negligence Per Se claims, it would be illegal, against public policy and unconscionable to include such a clause in any contract under NH Rev Stat § 382-A:2-302 (2016), would undermine the policies and obligations of Good Faith under NH Rev Stat § 382-A:1-304 (2007), and would act as an impermissible prospective waiver of federal and state statutory and Constitutional rights which would be against any State public policy to include such a waiver of Discriminatory Negligence Per Se actions by the Defendants in suits including 42 U.S.C. § 1981, 42 U.S.C. § 2000a and NH Rev Stat § 354-A:17 claims, and therefore transferring the case would be inconsistent with this state's public policy.

45. A forum selection clause is unenforceable if "enforcement would be 'unreasonable' under the circumstances." See Hendricks v. Bank of America, N.A., 408 F.3d 1127, 1137 (9th

Cir.2005). New Hampshire's long-arm statute must be construed in the broadest legal sense. See Hall v. Koch, 119 N.H. 639, 406 A.2d 962 Id. at 644, 406 A.2d at 965 (1979).

46. Contracts of indemnification which purport to indemnify a party against its own wrongful acts are looked upon with disfavor in New Hampshire. See Merimac Sch. Dist. V. Nat'l Sch. Bus. Serv., Inc., 661 A.2d 1197 (N.H. 1995). Indemnify and hold harmless a party from personal injury or property damage arising from his own negligence per se is void as against public policy and unenforceable and generally cannot require one party to indemnify another for the other party's negligence per se, in whole or in part.

47. In general, every contract contains an implied duty of good faith and fair dealing in the performance and enforcement of the contract. This duty requires that neither party will do anything that will destroy or injure the right of the other party to receive the benefits of the contract. In general, the duty of good faith and fair dealing and cannot perform incorrectly on purpose, Twitter abused its power when enforcing the terms of Plaintiff's contract.

48. For example, a court will never enforce a contract promoting something already against state or federal law (you can never enforce a contract for an illegal marijuana sale) or an agreement that offends the "public sensibilities" An example of a forum selection that may violate public policy may be found when a particular state has a strong interest in regulating a particular industry or in protecting a certain class of persons. See e.g. High Life Sales v. Brown-Forman Corp., 823 S.W. 2d 493 (Mo. 1992).

49. When an action exists at common law, the negligence per se doctrine may define the standard of conduct to which a defendant will be held as that conduct required by a particular statute, either instead of or as an alternative to the reasonable person standard. See Marquay v. Eno, 139 N.H. 708, 713, 662 A.2d 272, 277 (1995). The familiar test we apply to determine

whether a statutory standard of conduct may be offered in a particular case asks "(1) whether the injured person is a member of the class intended by the legislature to be protected, and (2) whether the harm is of the kind which the statute was intended to prevent." Id. at 715, 662 A.2d at 277 (quotation omitted). An implicit element of this test is "whether the type of duty to which the statute speaks is similar to the type of duty on which the cause of action is based." Id. at 716, 662 A.2d at 278. Whether the elements of the negligence per se test have been met is a question of law. See Lupa v. Jensen, 123 N.H. 644, 646, 465 A.2d 513, 514 (1983).

50. The Court of Appeals, reversing a judgment of the Appellate Division, held that "consistent with public morality and settled public policy"' a party will be denied recovery upon a contract valid upon its face, where immoral means were used to effect its purpose. See McConnell v. Commonwealth Pictures Corp., 7 N.Y.2d 465, 166 N.E.2d 494, 199 N.Y.S.2d 483 (1960).

51. Had the Plaintiff brought another Claim such as breach of contract or for negligence under such a clause, the UA might have had effect, but because all 3 Claims made by the Plaintiff can be described as “intentional torts”, the forum selection clause, in this case, is not enforceable as it is not applicable to the present Claims.

52. Plaintiff did not anticipate that the Defendant would break the law and did not agree to allow Twitter to discriminate against him or to intentionally give waiver to any illegal performance under our bargain of future disputes. Defendant’s UA portion of the contract should be forbidden in this case.

F. **Defendant has waived its personal jurisdiction defense through its conduct and participation in this case.**

53. On June 1, 2020, the Defendant submitted to this Court;

4 As part of the Complaint, Plaintiff has also moved to proceed anonymously. In determining whether to permit a litigant to proceed anonymously, courts in

> **this district consider: (1) whether the identity of the litigant has been kept confidential; (2) the reasons disclosure is feared or sought to be avoided, and the substantiality of these reasons; (3) the public interest in maintaining the confidentiality of the litigant's identity, versus the public interest in knowing the litigant's identity; (4) the undesirability of an outcome adverse to the litigant and attributable to his refusal to pursue the case at the price of being publicly identified; (5) whether the litigant has illegitimate ulterior motives; and (6) whether the opposition to the litigant's use of a pseudonym by counsel, the public, or the press is illegitimately motivated. See Doe v. Trustees of Dartmouth College, No. 18-cv-040-LM, 2018 WL 2048385, at *4-5 (D.N.H. May 2, 2018) (quoting Doe v. Megless, 654 F.3d 404 (3d Cir. 2011)). Twitter does not take a position on Plaintiff's request, except to say that it is unclear whether the standards for proceeding anonymously have been met. (See Motion and Memorandum, Dkt. @3).**

54. Defendant states that it does not take a position on Plaintiff's request to proceed anonymously but in the same breath avers that [it] "is unclear whether the standards for proceeding anonymously have been met", by "courts in this district" and that the leading law "in this district" is held within "Doe v. Trustees of Dartmouth College" and should be "considered". Defendant, availed itself of judicial resources in this forum in making these statements and manifests intent to submit to this Court's jurisdiction in "this district" and "in New Hampshire" and weighs in favor of defendants waiver of Personal Jurisdiction. Accordingly, the Court should find that defendant waived its personal jurisdiction defense through its conduct in the case. Actively participating in a case implicitly waives a jurisdictional objection when participation "manifests an intent to submit to the court's jurisdiction." See Yeldell v. Tutt, 913 F.2d 533, 539 (8th Cir. 1990). This defense "may be lost by submission through conduct." See Neirbo Co. v. Bethlehem Shipbuilding Corp., 308 U.S. 165, 168, 60 S.Ct. 153, 155, 84 L.Ed. 167 (1939). Participation includes engaging in discovery, taking part in settlement conferences, and filing and opposing motions for relief on the merits. See id.; see also Hamilton v. Atlas Turner, Inc., 197 F.3d 58, 61 (2nd Cir. 1999); Bel-Rey Co. v. Chemrite (Pty) Ltd., 181 F.3d 435, 443-444 (3rd Cir. 1999) as quoted in Ramos v. Foam Am., Inc., CIV No. 15-980 CG/KRS, 10-11 (D.N.M. Feb. 20, 2018). Defendant averred no such

argument that California Laws or any California Federal Court be used in any such determination of the Plaintiff's Motion to Proceed Anonymously.

55. The term "waiver" is best reserved for a litigant's intentional relinquishment of a known right. Where a litigant's action or inaction is deemed to incur the consequence of loss of a right, or, as here, a defense, the term "forfeiture" is more appropriate. See United States v. Olano, 507 U.S. 725, 733, 113 S.Ct. 1770, 123 L.Ed.2d 508 (1993) ("Waiver is different from forfeiture. Whereas forfeiture is the failure to make the timely assertion of a right, waiver is the 'intentional relinquishment or abandonment of a known right.' ''(quoting Johnson v. Zerbst, 304 U.S. 458, 464, 58 S.Ct. 1019, 82 L.Ed. 1461 (1938); as quoted in Hamilton v. Atlas Turner, Inc., 197 F.3d 58, 61 (2nd Cir. 1999); Swaim v. Moltan Co., 73 F.3d 711, 718 & n. 4 (7th Cir.1996) See id.; "Because the requirement of personal jurisdiction represents first of all an individual right, it can, like other such rights, be waived." See Insurance Corp. of Ir., Ltd., et al. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 703 (1982). Moreover, the "actions of the defendant may amount to a legal submission to the jurisdiction of the court, whether voluntary or not." Id. at 704-705. In particular, where a party seeks affirmative relief from a court, it normally submits itself to the jurisdiction of the court with respect to the adjudication of claims arising from the same subject matter. See Adam v. Saenger, 303 U.S. 59 (1938); Bel-Rey Co. v. Chemrite (Pty) Ltd., 181 F.3d 435, 443-444 (3rd Cir. 1999),

56. One can waive service of process by various means and become a party to a suit by voluntary appearance. "Id.(citing Vandegrift v. Knights Road Industrial Park, Inc., 490 Pa. 430, 416 A.2d 1011, 1013 (Pa. 1980)). "A defendant manifests an intent to submit to the court's jurisdiction when the defendant takes 'some action (beyond merely entering a written appearance) going to the merits of the case, which evidences an intent to forego objection to

the defective service.' "Id.(quoting Cathcart v. Keene Industrial Insulation, 471 A.2d 493, 499 (Pa. Super. Ct. 1984).

E. CONCLUSION

57. In this Circuit, "we treat a motion to dismiss based on a forum selection clause as a- motion alleging the failure to state a claim for which relief can be granted under Rule 12(b)(6), (failure to state a claim upon which relief can be granted). Rivera v. Centro Médico de Turabo, Inc., 575 F.3d 10, 15 (1st Cir.2009); see also, e.g., Silva v. Encyclopedia Britannica Inc., 239 F.3d 385, 387 (1st Cir.2001).

58. Each of Plaintiff's claims is plausible on its face." See *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (internal quotation marks omitted). Plaintiff need only allege and claim the statute was violated. "It is enough to show that the vendors failed to perform it in the only way in which the statute allows it to be performed." Anderson v. Daniel, 541K.B. 138, Ibid., at 144. (1924).

59. This requires Plaintiff to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.*; *see also Tringali v. Mass. Dep't of Transitional Assistance*, No. 12-cv-124-PB, 2012 WL 5683236, at *4 (D.N.H. Nov. 13, 2012) (dismissing pro se plaintiff's claims because "she has not pleaded sufficient facts" in support).

60. Plaintiff has alleged that the Defendant(s):

A. Discriminatively suspended Plaintiff's contract, restricted his access to services in a public accommodation and deleted restricted his access to a public forum, on a discriminatory basis because Plaintiff is white and behaving like a white person and on a racial discriminatory basis and in violation of Plaintiff's New Hampshire and US Constitutional rights.

B. UA is not applicable in any of the claims as the UA covers Negligence and not Per Se, Statutory or Intentional Negligence, as it would be against public policy and illegal for the UA to contain such a clause.

C. §230, as alleged, cannot save Defendant's from their actions in any claim as it is unconstitutionally vague; overbroad and viewpoint discriminatory on its face; authorizes and encourages arbitrary and discriminatory enforcement; enables State Actors to administer a policy on the basis of impermissible factors; lacks any plain legitimate sweep; allows the removal of free speech irregardless of whether the speech is "constitutionally protected or not". Or that Defendants, while acting as a state actor, under the direct supervision of directive of Congress, applied §230, overbroadly and on a discriminatory viewpoint, based on race.

D. The Plaintiff has elaborated on the who, what and where. Defendants workforce, including upper management, who mostly consisted of bias non-white or anti-white employees who hate whites; who were under presser from various groups, Congress and their own employees to go after white supremacists, created a health policy to target white users for removal from Twitter's public forum, using algorithms or artificial intelligence. Further alleged is discriminatory motive such as banning other whites, allowing users and promoters to post disparaging remarks regarding whites or the white race without retribution by Defendants and treating others similarly situated better than the Plaintiff for similar tweets; and that Defendants have shown a pattern of targeting Republicans and Conservatives which demonstrates that Defendants workforce has crossed the line from bias to discriminatory acts in the past, and then lied to the public for 2 years or longer, but then in their own words revealed that they had lied in the past concerning the targeting and then shadow banning over 600,000 accounts.

61. Plaintiff has alleged enough to raise a right to relief above the speculative level[.]" See *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007). "Proof of discriminatory motive is critical", "In some situations, motive "can be inferred from the mere fact of differences in treatment." Teamsters v. United States, 431 U.S. 324, 335-36 n.15 (1977).

62. Plaintiff has alleged that Twitter "Health" policies, the constant insistence that Twitter was going find and remove whites shows intent to discriminate on the basis of race. Had Twitter not come looking for whites, it would have never found the Plaintiff. See Hayes v. Michigan Cent. R.R., 111 U.S. 228, 241 (1884) (defining causa sine qua non as "a cause which if it had not existed, the injury would not have taken place").

63. Plaintiff would agree that Twitter is an interactive computer service under 230 and that The content was posted by another information content provider. But would disagree that Plaintiff's claims treat twitter as a publisher. Claims I and II treat the Defendant as a business owner and the 3rd claim treats them like they are a state actor, policing and enforcing laws for Congress, in a public forum.

64. Great discrepancies in the punishments received by the white non-supervisors in these cases, in contrast to their black peers, yields a reasonable inference that, in the summer of 2005, heiserman intentionally discriminated against them because they are white. When similarly situated workers are treated differently even though they have committed similar acts.
Plaintiff was fired at the time Twitter was committing these reasonably inferable acts of discrimination against white users.

65. Defendant reasons that the Plaintiff has not exhausted all his Administrative claims prior to bringing an action under NH Rev Stat § 354-A. If that held true, that would create

additional ambiguities to the UA clause as the clause now would require any claims go to a court in San Francisco first and prior to any New Hampshire Administrative agency?

For the reasons above, Plaintiff respectfully objects to the Court dismissing Plaintiff's claims with prejudice or in the alternative, transfer any claims to the Northern District of California.

WHEREFORE, the Plaintiff, respectfully requests that this Honorable Court:

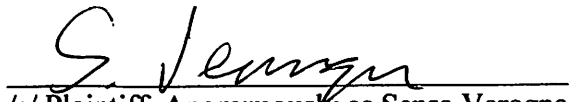
A. Deny Twitter's Motion to Dismiss Complaint in its entirety and proceed with discovery in the case;

B. Declare Twitter's CDA is not applicable in these types of actions;

C. Allow Plaintiff to leave and amend complaint to include the newer version of Twitters User Agreement May 25, 2018 version (See Compl., Ex. D-1, at § 4) and to amend any deficiencies in the Complaint; and

D. Grant such other and further relief as may be just and equitable.

Respectfully,



/s/ Plaintiff, Anonymously as Sensa Verogna
SensaVerogna@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of June 2020, the foregoing document was made upon the Defendant, through its attorneys of record to Jonathan M. Eck jeck@orr-reno.com and Julie E. Schwartz, Esq., JSchwartz@perkinscoie.com